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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

*J. B. Bradford
Proc II*

FILE: B-188055

DATE: January 19, 1977

MATTER OF: Monarch Wrecking, Inc.

DIGEST:

Protest involving allegations that demolition contracts affected under 12 U.S.C., Chapter 13, Subchapter II were awarded to wrecking companies which are not responsible contractors is not for settlement by GAO and is dismissed since Secretary of HUD is authorized under 12 U.S.C. 1702 (1970) to make such expenditures as are necessary to carry out provisions thereof without regard to any other provisions of law governing the expenditure of public funds and is authorized to sue and be sued. In addition, GAO no longer considers protests involving affirmative determinations of contractor responsibility.

Monarch Wrecking, Inc. (Monarch) has protested the Department of Housing and Urban Development's (HUD) award of seven demolition contracts to two wrecking firms which Monarch alleges are not responsible contractors. Specifically, Monarch alleges that when under contract with HUD in the past, one of these firms failed to meet a delivery date and both firms failed to pay prevailing wages or obtain HUD's approval for subcontracting as required by the contracts.

An earlier Monarch protest contesting HUD's solicitation of bids for a demolition contract was the subject of our decision Monarch Wrecking, Inc., B-184886, April 1, 1976, 76-1 CPD 214. In that case, the dwellings to be demolished were held under mortgages which had been insured by the Secretary of HUD pursuant to various sections in 12 U.S.C., Chapter 13, Subchapter II. The contract was effected under section 1710(g) of that subchapter which authorizes the Secretary to dispose of such properties as well as repair and renovate them.

Under 12 U.S.C. 1702 (1970) the Secretary of HUD is authorized to make such expenditures as are necessary to carry out the provisions of Subchapter II without regard to any other provisions of law governing the expenditures of public funds and is authorized to sue and be sued. Considering the broad authority granted by

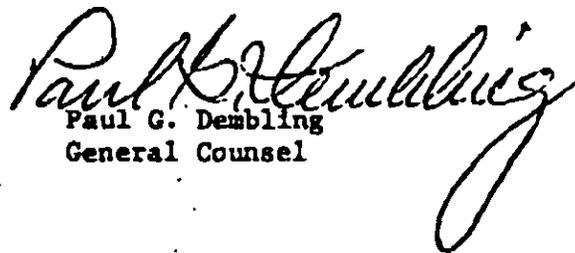
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Congress, we concluded that we could not imply restrictions on this authority. (See Federal Housing Administration v. Burr, 309 U.S. 242 (1940) and Mr. Eugene Lifkowitz, B-182885, January 24, 1975, 75-1 CPD 48.) We therefore held that this Office was without authority to settle the matter and dismissed the protest.

The seven demolition contracts which are the subject of the present protest were also effected under 12 U.S.C. Chapter 13, Subchapter II. As a result, and for the same reasons stated in our earlier decision, we must dismiss Monarch's present protest.

Even with authority to decide protests involving contracts effected under 12 U.S.C., Chapter 13, Subchapter II, we would have dismissed Monarch's protest, for we no longer consider protests against affirmative determinations of another contractor's responsibility, unless fraud is alleged on the part of the contracting officer or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974) 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138; The Camran Corporation, B-184227, B-185243, January 27, 1976, 76-1 CPD 47.

Accordingly, the present protest is dismissed without consideration on the merits.


Paul G. Dembling
General Counsel